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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JONATHAN W., a Person Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JANET W.,

Defendant and Appellant.

G041542

(Super. Ct. No. DP-016618)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary
Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal for Defendant
and Appellant.

No appearance for the Minor.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio
Torre, Deputy County Counsel, for Plaintiff and Respondent.

In March 2008, the court declared eight-year-old Jonathan W. a dependent of Orange County Juvenile Court after a petition by Orange County Social Services Agency (SSA), detailing various incidences of neglect by his mother, Janet W., was found to be true. Social workers and therapists documented the child's severe behavioral problems early – short attention span, aggressiveness, and difficulty with social interaction. The child has been variously diagnosed with Asperger's Syndrome, Attention Deficit Hyperactivity Disorder, Anxiety Disorder, and Autism/other pervasive development disorder.

Mother appeals the order to continue the child on psychotropic medications. We have reviewed the record, concluding the order is supported by substantial evidence and therefore affirm.

FACTS AND PROCEDURAL HISTORY

After mother was arrested in February 2008, child and his 17-year-old sister were left unsupervised in their motel room. When police and SSA personnel arrived at the motel room the following day, they took the children into custody.

The child has been subjected to numerous medical evaluations and tests; his behavioral and medical problems are well documented. The reports detail physical altercations with Orangewood staff, assaultive behavior towards peers, hysterical anger, use of profanities, and sexually inappropriate remarks, among other emotional and disciplinary issues. The court granted an application filed by psychiatrist Dr. Hratch Svadjian for authorization to administer psychotropic medication to the child. Mother did not oppose the application.

At the six-month review hearing, mother expressed concern about the administration of the anti-depressant Zoloft and requested reevaluation of the child. The court granted her request and scheduled another review hearing. It ordered a report on the child's progress be prepared for that hearing (the November report). Results of an MRI were normal.

In the meantime, the child's behavioral problems continued and in November Dr. Svadjian filed an application to increase the child's psychotropic medication (the November application), which the court granted. In the November application, Dr. Svadjian stated the increase was necessary because "[the child] is at risk of being terminated from school because of anger outbursts, assaultive behavior, low frustration tolerance, difficulty following directions and inflexibility." (Capitalization omitted.)

At the November review hearing mother again expressed concerns about the child's diagnoses and medication. Specifically, she believed the child had been misdiagnosed with attention deficit disorder and Zoloft was the cause of his angry outbursts. The court scheduled yet another medication review hearing for January 2009 (the January Review), with a report on the child's pre- and post-Zoloft behavior to be submitted (the January report).

The January report documented justification for the prescription of psychotropic medication in a number of ways: (1) the child had angry outbursts even before taking Zoloft; (2) the child displayed less anxiety after taking Zoloft; (3) the child was also on a progressive increase of the drug Lamictal, and if his Zoloft dosage were to stop and an adverse reaction occurred, it "would not be very clear as to which change was causative"; and (4) an adverse outcome could jeopardize the child's placement with a foster family. At the January Review, the court found the child's medication "appropriate and necessary" (capitalization omitted) and ordered it be continued. It is this order mother appeals.

DISCUSSION

Mother argues substantial evidence does not support the continued application of psychotropic medication because the evidence on which the court based its decision did not address: the "normal" MRI result; the side-effects of the medication; and the behaviors that increased after the child began the medication. Mother also

suggests Dr. Svadjian's diagnosis was "suspect" and that he was required and failed to address what specific behavioral problems the psychotropic medications were targeted to treat.

Section 369.5, subdivision (a) of the Welfare and Institutions Code provides that "[c]ourt authorization for the administration of psychotropic medication shall be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication."

The court based its order to continue the use of psychotropic medications for the child on the January report, the November application, and Dr. Pascarzi's review of the November application.

1. Standard of Review

The parties disagree on the standard of review, with mother arguing it is substantial evidence, citing *County of Santa Cruz v. City of Watsonville* (1985) 177 Cal.App.3d 831, 845, while SSA asserts it is abuse of discretion citing *In re Stephanie M.* (1994) 7 Cal.4th 295, 318. The standard of review is set out in *In re Misako R.* (1991) 2 Cal.App.4th 538, which holds, "In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to [the SSA]. We must indulge in all legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed. [Citations.]" (*Id.* at p. 545.)

2. The Evidence

The evidence on which the court based its order to continue the use of psychotropic medication for the child consists of: (1) the January report, (2) the November application, and (3) Dr. Pascarzi's review of the November application. This satisfies the substantial evidence test.

a. The January Report

The January report documents the following facts relevant to the order maintaining the child's medication. After Dr. Svadjian diagnosed the child with Anxiety Disorder, the child was initially prescribed 25 milligrams of Zoloft to treat it. When the anxiety continued, the Zoloft prescription was increased to 50 milligrams. Soon after the child showed drastic improvement, described as "outstanding progress" with "his behavior . . . stable."

Although Orangewood Staff noted his improved behavior, the child was involved in an incident where he made threatening remarks to his peers, had made suicidal statements, still felt fear using the bathroom, and admitted to still feeling hyperactive. But he felt the Zoloft was helping. Based on this, Dr. Svadjian again increased the child's Zoloft prescription, this time to 100 milligrams. But the child's anxiety, as well as his "suicidal and homicidal ideation," continued causing Dr. Svadjian to increase the Zoloft to 150 milligrams.

Social Worker Stevens raised mother's concerns about Zoloft and its possible side effects with Dr. Svadjian, who, while acknowledging the side effects, maintained the importance of the Zoloft prescription. The child had displayed behavior consistent with Zoloft's side effects even before taking it. Moreover, the overall effect of Zoloft had been positive. Further because of the child's progressive increase of the anti-seizure medication, additional medication changes would "confuse the picture." Finally an "adverse outcome" related to reduction of the dosage could jeopardize the child's foster family placement.

The January report shows each increase in the child's Zoloft prescription was justified with reference to specific incidences of the child's misbehavior or anxiety. Dr. Svadjian provided logical reasons for prescribing Zoloft generally. The January report constitutes substantial evidence on which the court could base its order.

b. The November Application and the Consulting Physician's Review

The November application contained a number of facts supporting the decision to continue the medication. It set out the child's symptoms, medical history, and diagnoses. Because the child was at risk of being expelled from school due to his behavioral problems, there was some urgency in increasing the dosage. In addition to his personal evaluation of the child, Dr. Svadjian had considered the results of the various examinations and tests. The child was informed in an "age-appropriate manner" of the benefits and possible side effects of the medication and agreed to take it. The child's caregiver was similarly informed and also agreed. The symptoms each medication was targeted to treat were listed.

The court's consulting physician, Dr. George Pascarzi reviewed the application and recommended the court authorize the requested medication. The role of the court's consulting physician is to give the court a "second opinion" on all applications for psychotropic medication.

The November application shows the medication was not excessive; the Risperdal was only a small dose, targeted at specific behavior problems and was to be reevaluated as the child's behavior improved. The child had been taking Zoloft for some time and this was only an increase in a medication that had already been approved by the court. Both were prescribed with knowledge of the child's previous diagnoses and treatments.

Dr. Svadjian, who had been treating the child since March 2008, prepared the November application. It was informed by the reports of several social workers and therapists. The statements made in the November application relate directly to the court's January order because they concern the same medications prescribed for the same conditions. The November application clearly constitutes substantial evidence on which the court properly based its order.

3. Mother's Arguments

Mother claims lack of substantial evidence based on failure to consider the “normal” MRI result, the side effects of the medication, and the behaviors that increased after the child began the medication. Mother also contends that Dr. Svadjian’s diagnosis was “suspect” and he was required and failed to address what specific behavioral problems the psychotropic medications were targeted to treat. Each of these arguments fails.

a. The “Normal” MRI Result

The November report describes the finding of the MRI examination as “normal pre and post contrast MRI examination of the brain.” Mother argues that, by excluding the MRI report, Dr. Svadjian did not provide the court all the information necessary “to make an informed decision.” But information regarding the MRI was contained in the report. That the court did not have in evidence the exact result of the MRI does not detract from the validity of the order. It is sufficient that the court was informed such a test had been conducted and the results were considered by Dr. Svadjian.

Mother also argues that Dr. Svadjian failed to state why the child required an anti-seizure medication when his MRI was normal. However, that medication was unrelated to his MRI results because his seizures were unrelated to the MRI results.

b. The Medications’ Side Effects

Mother also contends “Dr. Svadjian did not provide the court with evidence as to why another psychotropic drug, Risperdal, needed to be prescribed to counteract the side-effect of another psychotropic drug, Zoloft, which may have been prescribed in error, or, at least should have been tapered off, due to the side-effects.” Mother’s argument is unclear. In the November application, Dr. Svadjian states the symptoms targeted by Risperdal were the child’s anger outbursts and “ass[a]ultiveness.” That Zoloft may or may not have been the cause of these side effects does not suggest that the need for Risperdal was any less.

c. The Child's Behavioral Changes

Mother argues “[t]he application . . . did not address . . . the behaviors which have increased since the child began taking psychotropic medication.” She does not elaborate on what these behaviors were or how the medication failed to address them. As such, this argument is waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

d. Dr. Svadjian's "Suspect" Diagnosis

Mother contends Dr. Svadjian's diagnosis of “autism/other pervasive developmental disorder” is “suspect” because a later evaluation stated the child had no developmental problems. This argument fails for two reasons. First, mother overstates the report to which she cites. It merely said “[t]here are no known developmental delays at the present time,” not that “[the child] did not have any developmental problems,” as mother claims. Second, mother concedes “[t]he results of testing at the Regional Center were still pending when the hearing was held concerning the second application of psychotropic medication.” So she acknowledges any questions about Dr. Svadjian are raised without the benefit of the test results.

e. The Targets of the Medications

The record contradicts mother's claim the application did not state which issues the drugs were “targeted to treat.” The November application specifically shows Zoloft was to treat anxiety and Risperdal was for anger and outbursts. In addition, the January report states Zoloft was for treating anxiety disorder.

DISPOSITION

The order is affirmed.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.